

Thomas Jefferson to Noah Webster, Jr., December 4, 1790, from the Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.

TO NOAH WEBSTER J. MSS.

Philadelphia. Dec. 4. 1790.

Sir, —Your favor of Oct. 4. came to my hands on the 20. of November. Application was made a day or two after to Mr. Dobson for the copies of your essays, which were received, and one of them lodged in the office. For that intended for myself be pleased to accept my thanks. I return you the order on Mr. Allen, that on Dobson having been made use of instead of it. I submit to your consideration whether it might not be advisable to record a second time your right to the Grammatical institutes, in order to bring the lodging of the copy in my office within the 6. months made a condition in the law? I have not at this moment an opportunity of turning to the law to see if that may be done: but I suppose it possible that the failure to fulfil the legal condition on the first record might excite objections against the validity of that.

In mentioning me in your essays,¹ and canvassing my opinions, you have done what every man has a right to do, and it is for the good of society that that right should be freely exercised. No republic is

¹ In Webster's *Essays*, Boston: 1790, a section had been devoted to discussing Jefferson's arguments for a bill of rights, and to his chapter in the *Notes on Virginia* on the constitution of that state.

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more real than that of letters, and I am the last in principles, as I am the least in pretensions, to any dictatorship in it. Had I other dispositions, the philosophical & dispassionate spirit with which you have expressed your own opinions in opposition to mine, would still have commanded my approbation,

A desire of being set right in your opinion, which I respect too much not to entertain that desire, induces me to hazard to you the following observations. It had become an universal and almost uncontroverted position in the several states, that the purposes of society do not require a surrender of all our rights to our ordinary governors: that there are certain portions of right not necessary to enable them to carry on an effective government, & which experience has nevertheless proved they will be constantly encroaching on, if submitted to them: that there are also certain fences which experience has proved peculiarly efficacious against wrong, and rarely obstructive of right, which yet the governing powers have ever shown a disposition to weaken and remove. Of the first kind, for instance, is freedom of religion: of the second, trial by jury, Habeas corpus laws, free presses. These were the settled opinions of all the states, of that of Virginia, of which I was writing, as well as of the others. The others had in consequence delineated these unceded portions of right, and these fences against wrong, which they meant to exempt from the power of their governors, in instruments called declarations of rights & constitutions: and as they did this by Conventions which they appointed for the express purpose of reserving these rights, and of delegating others to their ordinary legislative, executive and judiciary bodies, none of the reserved rights can be touched without resorting to the people to appoint another convention for the express purpose of permitting it. Where the constitutions then have been so formed by conventions named for this express purpose they are fixed & unalterable but by a convention or other bo-

-dy to be specially authorized. And they have been so formed by, I believe, all the States, except Virginia. That State concurs in all these opinions, but has run into the wonderful error that her constitution, tho made by the ordinary legislature, cannot yet be altered by the ordinary legislature. I had therefore no occasion to prove to them the expediency of

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a constitution alterable only by a special convention. Accordingly I have not in my notes advocated that opinion, tho it was & is mine, as it was and is theirs. I take that position as admitted by them: and only proceed to adduce arguments to prove that they were mistaken in supposing their constitution could not be altered by the common legislature. Among other arguments I urge that the Convention which formed the constitution had been chosen merely for ordinary legislation; that they had no higher power than every subsequent legislature was to have; that all their acts are consequently repealable by subsequent legislatures; that their own practice at a subsequent session proved they were of this opinion themselves; that the opinion & practice of several subsequent legislatures had been the same, and so conclude “that their constitution is alterable by the common legislature.” Yet these arguments urged to prove that their constitution *is* alterable, you cite as if urged to prove that it *ought not to be* alterable, and you combat them on that ground. An argument which is good to prove one thing, may become ridiculous when exhibited as intended to prove another thing. I will beg the favor of you to look over again the passage in my *Notes*, and am persuaded you will be sensible that you have misapprehended the object of my arguments, and therefore have com-

-bated them on a ground for which they were not intended. My only object in this is the rectification of your own opinion of me, which I repeat that I respect too much to neglect. I have certainly no view of entering into the contest whether it be expedient to delegate unlimited powers to our ordinary governors? My opinion is against that expediency; but my occupations do not permit me to undertake to vindicate all my opinions, nor have they importance enough to merit it. It cannot, however, but weaken my confidence in them when I find them opposed to yours, there being no one who respects the latter more than Sir your most obedt & most humble servt.